United Nations

A/HRC/33/61/Add.2

General Assembly

Distr.: General
18 August 2016

Original: English

Human Rights Council
Thirty-third session
Agenda item 9
Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action

Report of the Working Group of Experts on People of African Descent on its mission to the United States of America

Note by the Secretariat

The report transmitted herewith contains the findings of the Working Group of Experts on People of African Descent on its visit to the United States of America from 19 to 29 January 2016. In it, the Working Group presents the current legal, institutional and policy framework, and measures taken to prevent racism, racial discrimination, xenophobia, Afrophobia and related intolerance faced by people of African descent in the United States, underscoring positive developments as well as gaps in implementation. The Working Group describes the situation, highlights good practices and the main challenges identified, and makes concrete recommendations.

GE.16-14265(E)

1614265

Please recycle

Report of the Working Group of Experts on People of African Descent on its mission to the United States of America*

Contents

		Page
I.	Introduction	3
II.	Background	3
	A. Historical overview	3
III.	Legal framework and steps taken for the protection of the human rights of people of African descent	4
	A. Legal framework	4
	B. Institutional and policy measures	5
IV.	Manifestations of racial discrimination	7
	A. The criminal justice system and barriers to civil and political participation	7
	B. Disparities in access to education, health, housing and employment	12
	C. Multiple forms of discrimination	15
V.	Conclusions and recommendations	15
	A. Conclusions	15
	B. Recommendations	19

* Circulated in the language of submission only.

I. Introduction

1. At the invitation of the Government of the United States of America, the Working Group of Experts on People of African Descent undertook a visit to the United States from 19 to 29 January 2016. The members of the delegation were Mireille Fanon Mendès-France, Sabelo Gumedze and Ricardo Sunga III.

2. The Working Group visited Washington, D.C.; Baltimore, Maryland; Jackson, Mississippi; Chicago, Illinois; and New York City. The Working Group met with representatives of several government departments and offices, including the Department of State, the Department of Homeland Security, the Department of Housing and Urban Development, the Department of Health and Human Services, the Department of Labor, the Department of Justice and the Environmental Protection Agency. The Working Group also met with officials of the Equal Employment Opportunity Commission, in Washington, D.C.

3. In Baltimore, the Working Group met with the Maryland federal judges. In Jackson, the Working Group met with officials of the Office of the Mayor and the Office of the Attorney General of the State of Mississippi. In Chicago, the Working Group met with the Attorney General of the State of Illinois, and with representatives of the Office of the Mayor of the City of Chicago and the Chicago Police Department. In New York City, the Working Group met with the Office of the Attorney General of the State of New York. The Working Group also met with officials of the White House working on African American issues and with staff of the congressional black caucus and interacted with a member of the United States Senate. In all the cities that the Working Group visited, it also met with hundreds of African Americans from communities with a large population of people of African descent living in the suburbs, as well as with lawyers, academics and representatives of non-governmental organizations.

4. The Working Group thanks the Government for its invitation and for its cooperation during the visit. In particular, the Working Group thanks the Office of Human Rights and Humanitarian Affairs at the Department of State for its support. The Working Group would also like to warmly thank the US Human Rights Network for coordinating meetings with civil society in different parts of the country, and all the people who shared their views on the human rights situation of African Americans in the country.

5. The Working Group regrets that it was not given access, contrary to the terms of reference for special procedure mandate holders, to Mississippi State Penitentiary (Parchman Farm) as had been requested. Visits to such facilities provide opportunities to obtain views and to make recommendations regarding measures needed to address violations and to improve compliance with international law. Failure to permit and facilitate such visits undermines the responsibility of the United States to cooperate with the United Nations human rights mechanisms. The Working Group also regrets that it was not possible to meet with all of the high-level state and local-level authorities, as had been requested.

II. Background

A. Historical overview

6. The history of people of African descent in the United States is well documented. The first enslaved Africans were brought to the American colonies in the early part of the seventeenth century. Slavery became an entrenched institution, with Africans making up one fifth of the population of the American colonies by 1775. The issuance in 1863 of the Emancipation Proclamation, which declared that all enslaved persons within the rebellious

states were free, was followed by the Thirteenth Amendment to the Constitution of the United States of America, which outlawed the practice of enslavement, the Fourteenth Amendment to the Constitution, in 1868, granting full United States citizenship to all persons born or naturalized in the United States, including African Americans, and the Fifteenth Amendment to the Constitution, in 1870, prohibiting denial of the right to vote on the basis of race.

7. Despite these legal and constitutional developments, the prevalence of "Jim Crow" laws — laws at the state and local levels that enforced racial segregation and persecution, primarily in the southern states — perpetuated political disenfranchisement, social and economic exploitation, violence and the overall subjugation of people of African descent until the 1960s. Lynching was a form of racial terrorism that has contributed to a legacy of racial inequality that the United States must address. Thousands of people of African descent were killed in violent public acts of racial control and domination and the perpetrators were never held accountable.

8. The civil rights movement from 1954 to 1968 was another important era in the struggle for rights by people of African descent in the country. The Montgomery bus boycott, the Selma to Montgomery marches, and many non-violent protests and acts of civil disobedience throughout the country led to further legislative developments, including but not limited to the Civil Rights Act of 1964, which prohibited, among other things, discrimination based on race or colour; the Voting Rights Act of 1965, which sought to overcome the legal barriers to the exercise of voting rights by African Americans; and the Fair Housing Act of 1968, which prohibited discrimination in the purchase or renting of property.

9. The 2010 United States census indicated that there were 43.21 million African Americans, constituting 14 per cent of the United States population. The July 2015 estimates indicated that there were 46.28 million African Americans, constituting 14.4 per cent of the United States population.[1] Despite substantial changes since the end of the enforcement of Jim Crow and the fight for civil rights, a systemic ideology of racism ensuring the domination of one group over another continues to impact negatively on the civil, political, economic, social and cultural rights of African Americans today.

II. Legal framework and steps taken for the protection of the human rights of people of African descent

A. Legal framework

10. The United States has ratified two of the international instruments related to the fight against racial discrimination: the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. Despite having also signed other relevant instruments, such as the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities, which could enhance the protection and recognition of the rights of people of African descent, the internal processes for ratification of these instruments have been stalled for a long time. The United States has not signed and ratified any of the human rights treaties that would allow United States citizens to present individual complaints to the United Nations human rights treaty bodies or to the

[1] United States Census Bureau. See http://factfinder.census.gov.

Inter-American Court of Human Rights. The United States is subject to the individual complaints procedure in the Inter-American Commission on Human Rights. The Working Group was informed that due to the standing declarations by the United States considering the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as non-self-executing, courts in general in the United States are reluctant to consider international human rights treaties and jurisprudence when these are invoked as independent legal arguments. Owing to these factors, human rights treaties are generally not recognized as giving rise to individually enforceable rights in United States courts.[7]

11. In its first report to the United States, in 2010, the Working Group provided an overview of the strong legal framework in place to combat racial discrimination. The Working Group recognizes that the country's Constitution, particularly its Thirteenth, Fourteenth and Fifteenth Amendments, in combination with civil rights legislation and the Supreme Court's jurisprudence, have provided people of African descent with legal tools to combat interpersonal and institutional discrimination. However, having listened to African Americans in different parts of the country, the Working Group considers that civil rights laws are not being fully implemented, and even if fully implemented, they are insufficient to overcome and transform the institutional and structural racial discrimination and racism against people of African descent. Mass incarceration, police violence, housing segregation, disparity in the quality of education, labour market segmentation, political disenfranchisement and environmental degradation continue to have detrimental impacts on people of African descent, despite the application of civil rights laws.

12. The Working Group was informed that the federal structure of the United States has the virtue of allowing some states to explore more progressive policies to protect and promote the rights of people of African descent, which other states could benefit and learn from. Nevertheless, the Working Group also received information that the autonomy of the states and of local government also allows for the establishment of more regressive policies. While federal law provides a baseline of protection for civil and human rights, state laws can vary, and thus people of African descent enjoy different levels of protection of their rights depending on the state that they are living in.

13. The Working Group was also informed that some state and local governments have limited avenues and resources to ensure the realization of the rights of people of African descent. While state attorneys general and state civil rights commissions have a key role in combating Afrophobia and racial discrimination at the state level, the Working Group perceived disparities in the commitment levels and capacities of those institutions to implement state civil rights legislation.

B. Institutional and policy measures

14. While there is no exclusive federal authority charged specifically with monitoring and advancing the situation of people of African descent, the Working Group was informed about measures that several federal agencies were undertaking to enforce civil rights laws. In general, authorities at the federal and state levels acknowledged that racial discrimination was a great challenge in the United States and acknowledged the need to adopt focused policies to address existing gaps in order to tackle institutional and structural racism. One example is My Brother's Keeper, a White House initiative launched in February 2014 to address opportunity gaps that African American boys and young men face in regard to their

[7] See HRI/CORE/USA/2011, para. 133.

access to basic health care, good nutrition, high-quality education, and labour opportunities, and in reduction of violence.

15. Another measure was the creation of a task force to identify best practices and to make recommendations to the President on how policing practices can promote effective crime reduction while building public trust. The task force released its report on 18 May 2015 with a set of recommendations divided into six pillars: building trust and legitimacy, policy and oversight, technology and social media, community policing and crime reduction, training and education, and officer wellness and safety.[3] The report adopted positive recommendations on key issues such as racial profiling, the use of force, the independence of investigations into killings by police officers, data collection, civilian oversight of law enforcement agencies and police workforce diversity, among others. The recommendations are not binding on state and local agencies.

16. The Civil Rights Division of the Department of Justice has been focusing on tackling racial bias in law enforcement through civil rights investigations into local police departments. Since 2009, the Department of Justice has opened 22 investigations and has reached 16 agreements to reform unconstitutional policing practices.[4] In 2010, the United States Attorney General created the Office for Access to Justice to address the crisis in the provision of indigent legal defence that continues to have a specific impact on African Americans and other minorities. In 2016, the Attorney General launched a set of reforms to the criminal justice system known as the Roadmap to Re-entry, which is aimed at reducing the existing high level of recidivism and at improving public health, child welfare, employment, education, housing and other key reintegration outcomes for those who have served their time in the federal prison system.[5]

17. One of the most important policy developments since the 2010 report of the Working Group has been the adoption of the Patient Protection and Affordable Care Act, which has allowed 2.3 million African American adults to gain medical health insurance.

18. In 2015, the Department of Housing and Urban Development released a new rule — Affirmatively Furthering Fair Housing — which provides planning tools to communities that are taking actions to overcome historic patterns of segregation.[6] The Equal Employment Opportunity Commission issued new guidance on the application of disparate impact analysis in cases involving the use by employers of arrest and conviction records in employment decisions, which often have a disproportionate impact on racial minorities.[7] Under this guidance, for example, the Equal Employment Opportunity Commission filed a lawsuit against BMW Manufacturing Co., alleging that the company excluded African American workers from employment at a disproportionate rate when the company's new logistics contractor applied BMW's criminal conviction records guidelines to incumbent logistics employees. In 2015, a United States district court ordered the company to pay $1.6 million and provide job opportunities to alleged victims of racial discrimination.[8]

---

[3] Final report of the President's Task Force on 21st Century Policing. Available from www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

[4] See www.justice.gov/crt/special-litigation-section-cases-and-matters#police.

[5] Available from www.justice.gov/reentry/file/844356/download.

[6] See www.hudexchange.info/programs/affh.

[7] Enforcement guidance on the consideration of arrest and conviction records in employment decisions under title VII of the Civil Rights Act of 1964. See www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

[8] See www.eeoc.gov/eeoc/newsroom/release/9-8-15.cfm.

19. The landmark decision of the Supreme Court in June 2016 in *Fisher v. University of Texas at Austin et al.*[9] which upheld an affirmative action policy at the University of Texas, permitting the inclusion of race as one of the components to be considered during the applications process, is a positive development with longer-term policy implications.

IV. Manifestations of racial discrimination

A. The criminal justice system and barriers to civil and political participation

20. The Working Group is deeply concerned at the alarming levels of police brutality and excessive use of lethal force by law enforcement officials, committed with impunity against people of African descent in the United States. In addition to the most recent and well-known cases of killings of unarmed African Americans — such as the cases of Eric Garner, Michael Brown, Tamir Rice, Walter Scott, Freddie Gray and Laquan McDonald — the Working Group received information about many other similar cases. The Working Group met with a considerable number of relatives of African Americans allegedly killed by police officers that are still seeking justice for their loved ones, including Tyrone West, Tyron Lewis, Jonathan Sanders, Oscar Grant, Tony Robinson, Marlon Brown, India Kager, Ronald Johnson, Mohamed Bah, Rekia Boyd, Sandra Bland and Alonso Smith.

21. Despite efforts made by the Department of Justice, there is still a lack of an official national system to track killings committed by law enforcement officials. Federal authorities commented that the main reason for this problem is that the 18,000 police departments and law enforcement agencies in the United States are not obliged to report these types of incidents. The Department of Justice was aware of this information gap and informed the Working Group that, notwithstanding the need for legislation, it was also building a system to track information nationwide. To date, the system had not been launched.

22. In the absence of a public national system to track cases of killings by police officers, the *Guardian* newspaper's "The Counted" database identified a total of 1,136 people killed by the police in 2015, of whom 302 were African Americans. African Americans were killed at twice the rate of white, Hispanic and Native Americans. In addition, about 25 per cent of the African Americans killed were unarmed, compared to 17 per cent of the white people.[10] The *Washington Post* database of police shootings registered 990 people shot dead in 2015, of whom 38 were unarmed African Americans.[11] Excessive and disproportionate use of force against African Americans also includes the use of tasers and heavy-handed assaults by law enforcement officers, which also have debilitating consequences for victims; there is no national system to track such incidents, either.

23. The Working Group is deeply concerned about the low number of cases where police officers have been held accountable for these crimes, despite the evidence. The *Guardian* reported that only 18 law enforcement officers were charged with crimes in relation to the 1,136 killings registered in 2015.[12] One in every four killings by police

[9] *Fisher v. University of Texas at Austin et al.*, 579 U.S. (2016).

[10] See www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database.

[11] See www.washingtonpost.com/graphics/national/police-shootings.

[12] See www.theguardian.com/us-news/2015/dec/31/the-counted-police-killings-2015-young-black-men.

officers that occurred in the first quarter of 2015 remain unresolved more than a year later, and 69 per cent of the 289 cases of killings by the police in the first three months of 2015 have now been ruled justified or accidental.[13] The final report of the President's Task Force on 21st Century Policing acknowledged some of the obstacles in tackling impunity related to killings by police officers and recommended mandatory external and independent criminal investigations and the use of external and independent prosecutors in cases of police use of force resulting in injury or death.[14]

24. Killings of unarmed African Americans by the police is only the tip of the iceberg in what is a pervasive racial bias in the justice system. The Working Group heard testimonies that African Americans face a pattern of police practices which violate their human rights: they are disproportionately targeted for police surveillance, and experience and witness public harassment, excessive force and racial discrimination. Due to racial bias, there is fear of approaching the police for help and there is also a failure on the part of the State to provide protection. The Working Group heard testimonies from African Americans based on their experience that from an early age they are treated by the State as a dangerous criminal group and face a presumption of guilt rather than of innocence. The rapid negative escalation of situations and the excessive use of force disproportionately used on African Americans demonstrates this concern. The Working Group heard reports that racial profiling is a rampant practice among law enforcement officials. During the country visit, the Working Group was informed about and observed the excessive control and supervision targeting all levels of the lives of African Americans. This control has been reinforced since September 2001 by the introduction of the Patriot Act, and affects not only United States citizens but also has a disparate impact on the detention, treatment and deportation of undocumented migrants, including people of African descent, who enter the United States.

25. The report by the Department of Justice on the Ferguson Police Department, released on 4 March 2015, confirmed that these practices are used. On the basis of police data on stops, searches and arrests, the report documented that although African Americans constitute 67 per cent of the population in Ferguson, 85 per cent of traffic stops, 90 per cent of tickets and 93 per cent of arrests made by the Ferguson police in 2012-2014 were against African Americans. One of the main conclusions of the report was that "Ferguson's law enforcement practices are shaped by the City's focus on revenue rather than by public safety needs. This emphasis on revenue has compromised the institutional character of Ferguson's police department, contributing to a pattern of unconstitutional policing... Further, Ferguson's police and municipal court practices both reflect and exacerbate existing racial bias, including racial stereotypes. Ferguson's own data establish clear racial disparities that adversely impact African Americans. The evidence shows that discriminatory intent is part of the reason for these disparities."[15]

26. Similarly, a report issued in April 2016 by the Police Accountability Task Force in Chicago concluded that racism was one of the main factors that could explain the pattern of arrests without justification, detentions without legal counsel, and physical and verbal abuse, including deaths and injuries, against African Americans committed by members of the Chicago Police Department. The report shows that despite African Americans constituting only one third of the city's population, 74 per cent of the 404 people shot by the Chicago police between 2008 and 2015 were black, three out of every four people on whom Chicago police officers used tasers between 2012 and 2015 were African Americans,

[13] See www.theguardian.com/us-news/2016/apr/13/the-counted-us-police-killings-officers-cleared

[14] Action items 2.2.2 and 2.2.3.

[15] United States Department of Justice, Civil Rights Division, "Investigation of the Ferguson Police Department", 4 March 2015, p. 2. Available from www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

and 72 per cent of the investigative street stops that did not lead to arrests in the summer of 2014 were carried out on African Americans. The report emphasizes that the Chicago Police Department's own data give "validity to the widely held belief that the police have no regard for the sanctity of life when it comes to people of colour".[16]

27. The Working Group recognizes steps taken at the federal and state level to end racial profiling. In 2014, the City of New York withdrew an appeal in connection with the landmark *Floyd v. City of New York* case and agreed to join a remedial process ordered by a federal judge, who had found the City liable for a decade-long pattern of discriminatory and unconstitutional stop-and-frisk practices that disproportionately affected the black and Latino communities.[17] In a recent report by the independent monitor of the remedial process, it was underscored that despite the recent reductions in the absolute number of stops recorded by the New York Police Department and the adoption of a set of preventive measures, there were still major challenges ahead in ensuring that written changes in policies were carried out in practice.[18]

28. The Department of Justice, as recommended by the Committee on the Elimination of Racial Discrimination,[19] reviewed the 2003 guidance regarding the use of race by federal law enforcement agencies and adopted in 2014 new guidance that also prohibits law enforcement biases based on ethnicity, gender, national origin, religion, sexual orientation or gender identity. The new guidance eliminates the exception made in the former guidance regarding the use of racial profiling in cases of national security threats and in enforcing laws protecting the integrity of the nation's borders.[20]

29. Although crime rates in the United States have been decreasing for the last 20 years, the federal and state prison and local jail population has soared to over 2.2 million people, with another 7 million on parole or probation.[21] African Americans are overrepresented in the penitentiary system, accounting for 36 per cent of sentenced federal and state prisoners.[22] African American women constitute 21 per cent of the imprisoned female population. The incarceration rate for African American males is 5.9 times higher than the rate for white males, while the rate for African American females is 2.1 times higher than the rate for white females.[23] The Sentencing Project has underscored that if current trends continue, one of every three black American males born today can expect to go to prison in his lifetime.[24]

30. Thousands of young African Americans, particularly those living under the poverty line and with low levels of educational attainment, have been placed in detention centres, without addressing the root causes of crime, guaranteeing better security to the communities where they lived or offering them effective rehabilitation.

---

[16] Police Accountability Task Force, "Recommendations for reform: restoring trust between the Chicago police and the communities they serve", April 2016, p. 8.

[17] See *Floyd v. City of New York*, 959 F. Supp 2d 540 (Southern District of New York, 2013).

[18] Second report of the independent monitor, February 2016. See https://ecrjustice.org/sites/default/files/attach/2016/02/Floyd%20Monitor%20Second%20Status%20Report%20Feb%202016.pdf.

[19] See CERD/C/USA/CO/7-9.

[20] Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation or Gender Identity, December 2014. See www.justice.gov/sites/default/files/ag/pages/attachments/2014/12/08/use-of-race-policy.pdf.

[21] Bureau of Justice Statistics. See www.bjs.gov/content/pub/pdf/cpus14.pdf.

[22] Bureau of Justice Statistics. See www.bjs.gov/content/pub/pdf/p14.pdf.

[23] Executive Office of the President of the United States, "Economic perspectives on incarceration and the criminal justice system", April 2016.

[24] See http://sentencingproject.org/wp-content/uploads/2015/12/Race-and-Justice-Shadow-Report-ICCPR.pdf.

31. The Working Group was informed that the "War on Drugs" had had a devastating impact on African Americans and that mass incarceration was considered a system of racial control that operated in a similar way to how Jim Crow laws once operated.[25]

32. The Working Group observed that the federal authorities, and some state authorities, have recognized that mass incarceration has been ineffective and have started taking measures to curb some of its negative impacts. At the federal level, the Administration has worked to enhance common-sense sentencing reforms by reducing disparities in the mandatory minimums for crack and powder cocaine possession (Fair Sentencing Act of 2010) and by modernizing the federal sentencing guidelines for drug crimes.[26] The majority of states have also lowered sentences for drug and property crimes and have increased opportunities for early release.[27]

33. The Working Group was also informed about the serious disadvantages that individuals with criminal records or a history of incarceration face when they go back to their communities, in accessing employment, housing, health, safety net programmes and welfare assistance. For example, African Americans with criminal records are 50 per cent less likely to receive an interview request or job offer than individuals without criminal records. Furthermore, white men with a criminal record had more positive responses in job applications than African American men with no criminal record even when their work experience was the same.[28] Individuals with records of low-level non-violent offences may be denied public housing assistance, and individuals with a felony drug record are fully or partially excluded from food stamps (the Supplemental Nutrition Assistance Program, also known as SNAP) in 30 states.[29]

34. Acknowledging this problem, the Federal Government has put in place some re-entry programmes. The Working Group was informed that the Office of Personnel Management had modified its rules to delay inquiries into criminal history until later in the federal hiring process. Grantees of the Department of Labor's Re-entry Employment Opportunities programme are able to use grant funds to pay non-profit legal services centres to assist programme participants with mitigating the impact of criminal records, and the Department of Housing and Urban Development intends providing funds for organizations to assist with expunging, sealing and/or correcting juvenile or adult records. Nevertheless, the Working Group was informed that federal and state re-entry programmes are underfunded in terms of meeting the needs of the 600,000 prisoners released each year.

35. The Working Group is concerned about inadequate conditions of detention and about particularly serious barriers in accessing health treatment, including mental health treatment. A large number of prisoners in Pennsylvania, who have been diagnosed with

[25] Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (The New Press).

[26] In 2014, with the support of the Department of Justice, the independent United States Sentencing Commission voted to amend federal sentencing guidelines for certain drug crimes. This change in sentencing guidelines will prospectively reduce the federal prison population by 6,500 prisoners over five years.

[27] Rebecca Silber, Ram Subramanian and Maia Spotts, "Justice in review: new trends in state sentencing and corrections 2014-2015", Vera Institute of Justice, May 2016. See www.vera.org/sites/default/files/resources/downloads/state-sentencing-and-corrections-trends-2014-2015.pdf.

[28] "Criminal stigma, race, gender and employment: an expanded assessment of consequences of imprisonment for employment". See https://csgjusticecenter.org/reentry/publications/criminal-stigma-race-gender-and-employment-an-expanded-assessment-of-consequences-of-imprisonment-for-employment.

[29] Executive Office of the President of the United States, "Economic perspectives on incarceration and the criminal justice system", April 2016.

hepatitis C and are primarily of African descent, have reportedly not received appropriate medication due to the high costs of treatment. The Working Group heard testimonies of labour impositions on inmates, who earned around 15 to 20 cents per hour of work. African American communities emphasized that the privatization of detention centres might tend to privilege the earning of profits, by sacrificing adequate detention conditions. The Working Group also heard how the mass incarceration of African American men and women had had a devastating impact on their children.

36. The Working Group commends the landmark Supreme Court decisions that banned the application of the death penalty for children under 18 years of age (*Roper v. Simmons*[30]), that prohibited life sentences without parole imposed on juveniles convicted of non-homicide offences (*Graham v. Florida*[31]) and that considered unconstitutional mandatory life sentences without parole for children under 17 years of age convicted for homicide (*Miller v. Alabama*[32]). Nevertheless, the Working Group is concerned that life imprisonment sentences can still be imposed on children convicted of homicide, that in 15 states children can still be tried as adults, and that around 10,000 children are housed in adult prisons and jails on any given day in the United States. According to the Equal Justice Initiative, 70 per cent of the children sentenced to life in prison are African Americans.[33]

37. Solitary confinement or restrictive housing is an extensive practice in the United States. The Liman Program at Yale University estimated that approximately 80,000 to 100,000 inmates were being held in restrictive housing in federal and state penitentiaries in the fall of 2014.[34] Based on the results of the National Inmate Survey 2011-2012, the Bureau of Justice Statistics of the Department of Justice estimated that 18 per cent of the inmates in federal and state prisons affirmed having been placed in solitary confinement during the course of 12 months.[35] A study made by the New York City Department of Health and Mental Hygiene on the records of first-time inmates in the New York City jail system between 2011 and 2013 found that African Americans were 2.52 times more likely than whites to be put in solitary confinement.[36]

38. The Working Group acknowledges that on 25 January 2016, the President of the United States, Barack Obama, announced the adoption of a set of recommendations made by the Department of Justice on the use of solitary confinement in the federal prison system. The Department of Justice recommended important measures, such as the ending of solitary confinement for juveniles and for inmates who have committed low-level infractions, the placement of inmates with serious mental illness in alternative forms of housing, limitations on the use of punitive segregation, the introduction of the principle of less restrictive conditions for inmates who face legitimate threats inside the prison, and the establishment of a data system to report on the use of solitary confinement. The Working Group was also informed about some reforms made at the state level (namely in Colorado, New Mexico, Virginia and Washington) aimed at restricting the use of solitary confinement. Notwithstanding these positive steps, the Working Group is concerned that

[30] *Roper v. Simmons*, 543 U.S. 551 (2005).
[31] *Graham v. Florida*, 560 U.S. 48 (2010).
[32] *Miller v. Alabama* 567 U.S. 132 S.Ct. 2455 (2012).
[33] Equal Justice Initiative, "All children are children: challenging abusive punishment of juveniles".
[34] The Liman Program, Yale Law School, and the Association of State Correctional Administrators, "ASCA-Liman 2014 national survey of administrative segregation in prison" (2015).
[35] Department of Justice, Report and recommendations concerning the use of restrictive housing, 2016. Available from www.justice.gov/restrictivehousing.
[36] Eatos Kaba and others, "Disparities in mental health referral and diagnosis in the New York City Jail Mental Health Service", *American Journal of Public Health*, vol. 105, No. 9 (September 2015), pp. 1911-1916.

the recommendations made by the Department of Justice are not binding and are only applicable to the federal prison system.[37]

39. The Working Group was also informed that race was a significant factor in death penalty cases in the United States. African Americans represent 41.7 per cent of the death row population and 34.6 per cent of defendants executed since 1976 in the United States.[38] Studies also reveal that there is a strong correlation between race and the decision to impose the death penalty. Despite the fact that a vast majority (90 per cent) of homicides in the United States are intraracial, out of the 1,359 inmates executed in the United States (in the period from the 1976 reinstatement of capital punishment to 2013), only 17 were white defendants convicted for killing African Americans, while 230 were African American defendants convicted for killing white persons.

40. The racial composition of the jury is one of the main identified causes of racial bias in the application of the death penalty. While the Constitution of the United States of America entitles defendants to trial by an impartial jury, a common pattern in many states is that minorities are underrepresented on capital punishment juries. The Working Group acknowledges the recent ruling (*Foster v. Chatman*)[39] in which the Supreme Court considered that prosecutors had violated *Batson v. Kentucky* (1986) regarding race-based discrimination in jury selection.

41. The dangerous ideology of white supremacy inhibits social cohesion among the United States population. Hate crime groups, including white supremacist terror groups, are still active in the United States, targeting African Americans, as was seen in the attack at a church in Charleston in 2015. The Confederate flag is considered as a symbol of hate for many African Americans and they have led campaigns to have it removed, however it still is used by some local authorities.

42. The Working Group was also concerned that voter ID laws with increased identification requirements and limits on early voting and registration in several states served to discriminate against minorities such as African Americans, contrary to the spirit of the Voting Rights Act of 1965. In 2013, the Supreme Court, in its decision in *Shelby v. Holder*, struck down parts of the Voting Rights Act, thereby making it easier to put in place voting restrictions at the state and local levels.

B. Disparities in access to education, health, housing and employment

43. The cumulative impact of racially motivated discrimination faced by African Americans in the enjoyment of their rights to education, health, housing and employment, among other economic, social, cultural and environmental rights, has had serious consequences for their overall well-being. Racial discrimination continues to be systemic and rooted in an economic model that denies development to the poorest African American communities. More than 10 million (26 per cent) of African Americans remain mired in poverty, and of that figure, almost half (12 per cent) live in what is known as "deep poverty".[40]

[37] Executive Office of the President of the United States, "Economic perspectives on incarceration and the criminal justice system", April 2016.

[38] See www.deathpenaltyinfo.org/race-death-row-inmates-executed-1976#defend.

[39] *Foster v. Chatman*, 578 U.S. (2016).

[40] See www.feedingamerica.org/hunger-in-america/impact-of-hunger/african-american-hunger/african-american-hunger-fact-sheet.html.

44. The Working Group is concerned about reports that across the country there are police officers in schools, without appropriate training, arresting children for minor offences and dealing with behaviour that previously would be handled as part of a school disciplinary process, resulting in the criminalization of children's behaviour and severe punishment. The police have the authority to detain, frisk and arrest children in school. For example, a black female student was violently arrested by a school resource officer at Spring Valley High School in South Carolina in 2015. Zero tolerance policies and heavy-handed efforts to increase security in schools have led to the excessive penalization and harassment of African American children through racial profiling. African American children are more likely to face harsh disciplinary measures than white children and are being pushed out of school into the criminal justice system — a phenomenon that has been described sadly as the "school to prison pipeline".[41]

45. The Working Group is concerned by the underfunding and closure of schools, particularly those in poor neighbourhoods with significant African American populations. The Working Group was particularly concerned to learn of threats to close Chicago State University, a historically black university.

46. In school curricula, the historical facts concerning the period of colonization, the transatlantic trade in Africans, and enslavement, which have been crucial to the organization of contemporary American society, are not sufficiently covered in all schools. The curricula in some states fail to address adequately the root causes of racial inequality and injustice. This contributes to the structural invisibility of African Americans.

47. The Working Group also received information about de facto segregation of schools. This segregation appears to be nurtured by a culture rooted in the legacy of racial inequality and by failure to address the history of racial injustice, enslavement and the Jim Crow laws.

48. The Working Group noted that a number of factors contributed to the disparities faced by African Americans in realizing the right to the enjoyment of the highest attainable standard of health, which included lack of access to health insurance coverage, lack of access to preventive services and care, and shortcomings related to a lack of diversity and of cultural competency among those giving the care. While the implementation of the Patient Protection and Affordable Care Act has led to 20 million people getting health insurance coverage, states with some of the widest health disparities in the country have rejected expansion of Medicaid, one of the main tools to cover the uninsured. Nine out of ten people who fall into the coverage gap live in the South, and black adults are more likely than any other racial group to be affected.[42] The impact of social determinants such as lack of access to good-quality and healthy housing conditions, lack of education and employment, and transportation barriers also continued to serve as impediments to full enjoyment of the right to health.

49. The Working Group learned that African Americans had limited access to food variety, including to healthy food, as they were concentrated in poor neighbourhoods with food outlets selling unhealthy and even expired food. African Americans have the highest rates of obesity, which is linked to "food deserts".

[41] See www.aclu.org/issues/juvenile-justice/school-prison-pipeline?redirect=fact-sheet/what-school-prison-pipeline.

[42] Rachel Garfield and Anthony Damico, "The coverage gap: uninsured poor adults in states that do not expand Medicaid — an update", 21 January 2016. Available from http://kff.org/health-reform/issue-brief/the-coverage-gap-uninsured-poor-adults-in-states-that-do-not-expand-medicaid-an-update.

50. The Working Group is concerned about the persistence of a de facto residential segregation in many of the metropolitan areas in the United States. In the Working Group's meeting with the Department of Housing and Urban Development, a series of maps were shown which not only starkly depicted high concentrations of African American families in low-income neighbourhoods and districts, but also reflected the correlation between racial segregation and socioeconomic disparities in access to health, education, and even access to adequate food, between the African American population and the white population. The Working Group was informed that people of African descent were more likely than other people with similar borrower characteristics to be victims of predatory lending, to receive higher-cost loans and to lose their homes to foreclosure. The Department of Housing and Urban Development recognizes that although the most blatant forms of housing discrimination have declined since the 1970s because of the implementation of the Fair Housing Act, the forms of discrimination that persist raise the costs of housing searches for members of minorities and restrict their housing options.

51. The Working Group was also informed about "racial steering", a practice employed by real estate brokers to guide prospective property buyers either towards or away from neighbourhoods on the basis of their race. In many of the places it visited, the Working Group heard from civil society that gentrification had had a detrimental and disparate impact on African Americans.

52. African American people are also concerned that they are disproportionately exposed to environmental hazards that impact on their health and standard of living. They are often forced to live in disadvantaged areas with hazardous environments (e.g. in proximity to industrial toxicity, power stations, flood zones and so on) and without access to social and commercial facilities. The most polluting industrial facilities, across a range of sectors from farming and mining to manufacturing, are more likely to be situated in poor and minority neighborhoods, including those of people of African descent. For instance, the Working Group is concerned about the possible health risks to African Americans on account of the incinerator project in Curtis Bay, Baltimore, and the lead-contaminated water in Flint, Michigan. The Working Group was also informed about the destruction of public housing in some cities; at the same time, public funding for new houses appears to be insufficient to meet the demands for new housing.

53. According to the Department of Housing and Urban Development, in 2015, of the more than half a million homeless people in the United States, African Americans constituted 40.4 per cent. They also constituted 27.8 per cent of the homeless people who were unsheltered.

54. Despite the recovery of the United States economy, the impact of the 2008 and 2009 recession on African Americans is still very much present. The unemployment rate among African Americans is almost twice the national unemployment rate. The Working Group is particularly concerned about the level of unemployment among young African Americans without a high school degree. In 2014, the annual income for African Americans was just under half the income of white Americans who are not Hispanic.

55. People of African descent continue to be underrepresented in management positions. In 2013, they accounted for only 7 per cent of workers in management occupations. Instead, African Americans disproportionately work in temporary jobs with less security and lower salaries. Nearly half a million African Americans earn the minimum wage. The Equal Employment Opportunity Commission continues to receive more than 30,000 complaints a year concerning racial discrimination.

C. Multiple forms of discrimination

56. The Working Group studied intersectionality of the different forms of discrimination faced by people of African descent and heard experiences of racial discrimination based on ethnicity, religion, socioeconomic status, sex and gender identity. The Working Group is particularly concerned by the increasing number of murders of transgender women of African descent and the increasing level of violence affecting them. Racial discrimination also disparately impedes the ability of African American women to maintain overall good health, control their sexuality and reproduction, survive pregnancy and childbirth, and parent their children. African American women in the United States die from pregnancy-related complications at a rate three to four times higher than that of white women.[41] The Working Group is particularly concerned about the fact that 37 per cent of the households headed by African American women live below the poverty line.[42]

57. The Working Group of Experts on People of African Descent shares the findings of the Working Group on the issue of discrimination against women in law and in practice in respect of African American women.[43] In particular, the Working Group of Experts on People of African Descent is concerned at the disproportionate number of African American women subjected to heightened levels of violence, including rape and sexual violence. It also deplores reports of police brutality and the increased number of killings of African American women by the police. Furthermore, it is disturbed at the persistent fatal consequences for women of the lack of gun control, particularly in cases of domestic violence.

V. Conclusions and recommendations

A. Conclusions

58. The Working Group welcomes the work of the bureaus and offices in all government departments and agencies, which implement the civil rights laws through the investigation of complaints, litigation, and the issuance of guidance, and by securing remedies, including compensation.

59. The Working Group acknowledges the Office for Access to Justice, of the Department of Justice, for its work to improve justice for all Americans, and the Civil Rights Division, also of the Department of Justice, for its work on investigations into excessive use of force by the police and on patterns of discrimination. The Working Group welcomes the steps taken to reform the criminal justice system and combat racial discrimination and disparities through initiatives including the Fair Sentencing Act; the Department's Smart on Crime and re-entry initiatives; the report and recommendations of the President's Task Force on 21st Century Policing, to strengthen community-police relationships across the country; the new Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation or Gender Identity; and the enforcement guidance on the consideration of arrest and conviction records in employment decisions under title VII of the Civil Rights Act of 1964.

---

[41] Centers for Disease Control and Prevention, Pregnancy mortality surveillance system. See www.cdc.gov/reproductivehealth/maternalinfanthealth/pmss.html.

[42] United States Census Bureau (2015), American Community Survey one-year estimates, 2014, table S0201.

[43] See A/HRC/32/44/Add.2.

60. The Working Group also noted that during its visit, the Government adopted a series of executive actions to reduce the use of solitary confinement at the federal level by prohibiting the solitary confinement of juveniles, diverting inmates with serious mental illness to alternative forms of housing, and establishing that inmates should be housed in the least restrictive settings, among other issues. These changes are part of a larger effort to implement criminal justice reforms, including those now pending in Congress.

61. The Working Group noted White House initiatives such as My Brother's Keeper and the White House Initiative on Educational Excellence for African Americans, aimed at addressing opportunity gaps and improving educational outcomes for African Americans.

62. The Working Group noted the new report by the Charles Colson Task Force on Federal Corrections, which concluded that punitive mandatory sentences for drug crimes represent the primary driver for prison overcrowding.

63. The Working Group welcomes the abolition of the death penalty in three additional states since the Working Group's visit to the United States in 2010, as this form of torture and inhumane punishment is disproportionately used against African Americans.

64. The Working Group noted the important development in the area of health with the adoption of the Patient Protection and Affordable Care Act, which has allowed 2.3 million African American adults to gain medical health insurance.

65. The Working Group noted some positive developments at the state and local levels. The Working Group welcomes the measures taken in New York City that prohibit employers from asking about criminal history until an employee is hired. These measures also allow the issuance of municipal identification cards for undocumented migrants, and create a policy of issuing desk appearance tickets for certain offenders as an alternative to imprisonment for a misdemeanour offence. The Working Group also noted the decision to end the stop and frisk policy.

66. Similarly, the Working Group welcomes the steps taken in Illinois to combat the home foreclosure crisis that had especially affected African Americans. The Working Group also welcomes the measures taken by the mayor of Chicago to foster accountability in the police department following the Laquan McDonald case.

67. The Working Group welcomes the growing human rights movement in the United States, which has successfully advocated for social change. Following the epidemic of racial violence by the police, civil society networks such as Black Lives Matter, together with other activists, are strongly advocating for racial justice, legal and policy reforms, and citizen control over policing and other areas which directly target African Americans.

68. Despite the positive measures, the Working Group remains extremely concerned about the human rights situation of African Americans. In particular, the legacy of colonial history, enslavement, racial subordination and segregation, racial terrorism and racial inequality in the United States remains a serious challenge, as there has been no real commitment to reparations and to truth and reconciliation for people of African descent. Contemporary police killings and the trauma that they create are reminiscent of the past racial terror of lynching. Impunity for State violence has resulted in the current human rights crisis and must be addressed as a matter of urgency.

69. **Racial bias and disparities in the criminal justice system, mass incarceration and the tough-on-crime policies disproportionately impact African Americans. Mandatory minimum sentencing and the disproportionate punishment of African Americans including with the death penalty are of grave concern.**

70. **The Working Group identified some of the main barriers to tackling impunity for killings by the police as: (a) the lack of independence of the initial investigations, which in the majority of cases are conducted by the same police department that the alleged perpetrator is a member of; (b) the wide discretion of prosecutors to determine when and how to present charges; and (c) the fact that some federal, state and county practices are not in line with international standards as regards the use of force.[40]**

71. **The surge in incarceration has been driven since the 1980s by changes in criminal justice policies as part of the so-called "War on Drugs". Policies enacted at the federal and state levels emphasizing harsher sentencing rules (such as the more frequent use of mandatory minimums and of "three strikes" rules), longer prison sentences and higher conviction rates have been applied with a racial bias, with deep collateral damage on African Americans.**

72. **Disparities in the enforcement of policies can be found in the different approaches adopted by states to address issues such as racial profiling, the presence of police in schools, the criminalization of homelessness, limitations on the use of lethal force by law enforcement officials, the use of solitary confinement and the prosecution of juvenile offenders as adults, among others. The United States is also not acting with due diligence to protect the rights of African Americans, as evidenced by the lack of gun control and the stand-your-ground laws, among other things.**

73. **The Working Group is concerned about the lack of an official and reliable national system to track killings and excessive use of force committed by law enforcement officials while on duty. The Working Group is also deeply concerned about the low number of cases in which police officers have been held accountable. It identified that the federal, state and county regulations that are not in line with international standards on the use of force and firearms are some of the main barriers to police accountability.**

74. **Mass incarceration has had a disproportionately high impact on people of African descent. The devastating impact of the "War on Drugs" has led to mass incarceration and is compared by African Americans to enslavement, due to the exploitation and dehumanization of African Americans. The costs of mass incarceration practices must be measured in human lives — particularly the generations of young black men and women who serve long prison sentences and are lost to their families and to society at large.**

75. **The Working Group is also concerned about the criminalization of poverty, which disproportionately affects African Americans. There has been an increase in the imprisonment of people for minor offences and of those who are unable to pay debts due to increases in fines and fees. They are detained in debtor prisons and made**

[40] Amnesty International has identified that state law on the use of force fails to comply with international standards, which require that lethal force should only be used as a last resort by law enforcement officials when strictly necessary to protect themselves or others against imminent threat of death or serious injury. See Amnesty International, "Deadly force: police use of lethal force in the United States" (2015). Available from www.amnestyusa.org/sites/default/files/amusa_deadlyforcereportjune2015.pdf.

to work off their debt. As illustrated by the Department of Justice investigation of the Ferguson Police Department, in some jurisdictions the imposition of fines is a way to secure revenues rather than to maintain public security. This creates numerous problems for individuals and families. There is also an excessive punishment of poor children for minor offences.

76. State laws establishing mandatory minimum sentences and zero tolerance policies have been applied with racial bias. Thousands of young African Americans have been placed in detention centres, without addressing the root causes of crime, or guaranteeing better security to their communities; nor have they been offered effective rehabilitation. People who have served their time in prison continue to be stigmatized when they are released. Their criminal records impede them from finding a job, getting adequate housing or accessing social programmes, and from voting. Some re-entry programmes are not well funded, and re-entry programmes are not present countrywide.

77. Racial profiling is a rampant practice and seriously damages the trust between African Americans and law enforcement officials. Also, some parts of the media routinely portray African Americans as criminals and this negatively impacts the perception that society in general has of African Americans. These practices not only erode trust but also lead to fatal consequences. For example, Philando Castile was stopped by law enforcement dozens of times before he was eventually shot and killed.

78. The Working Group expresses deep concern about the continued existence of the death penalty in 31 states and at the federal level.

79. While noting the recent executive actions on solitary confinement, the Working Group remains concerned about its use in prisons, juvenile detention centres and foster care, at both the federal and state levels. The Working Group is particularly concerned about its negative impact on children.

80. The Working Group is concerned about the underage prosecution of children as adults in the United States. Children are detained in adult prisons and jails, putting them at risk of sexual assault and abuse. Juveniles should be treated as juveniles, no matter what crime they are alleged to have committed, and must be held in a juvenile facility. The Working Group is also concerned at the use of police in schools and at school discipline being criminalized, subjecting African American children in particular to severe punishments. These practices are a violation of children's human rights and should be eliminated.

81. The persistent gap in almost all the human development indicators, such as life expectancy, income and wealth, level of education, and even food security, between African Americans and the rest of the United States population, reflects the level of structural and institutional discrimination that creates de facto barriers for people of African descent to fully exercise their human rights.

82. Geographic location and zip code can determine to some extent the future of young African Americans. People from poor black neighbourhoods are more likely to face lower educational attainment, more exposure to violence and crime, a tense interaction with the police, fewer employment opportunities, environmental degradation and also low life expectancy rates.

83. African Americans in many cities are facing a housing crisis, in which people are not able to pay their rents or mortgages, and even less to purchase a new house, and are subsequently subject to de facto gentrification.

84. The Working Group acknowledges that federal civil rights legislation, put in place in the 1960s and 1970s, has had a positive impact by redressing individual and even institutional cases of racial discrimination. However, hearing the testimonies of African Americans in different parts of the country, the Working Group is concerned about the implementation of civil rights laws not being sufficiently effective to overcome and transform the structural racial discrimination against African Americans.

85. The complex organizational structure of the legal system, with the independence of federal, state and county jurisdictions, and the lack of direct applicability of international human rights law and policies, creates gaps that impact deeply on the human rights of African Americans.

86. The Working Group is concerned that international human rights treaties cannot be invoked in national courts, as in most cases there is no enabling legislation and they have been declared non-self-executing.

87. The following recommendations are intended to assist the United States in its efforts to combat all forms of racism, racial discrimination, Afrophobia, xenophobia and related intolerance.

B. Recommendations

88. The Working Group reiterates the recommendation that it made after its visit to the United States of America in 2010 to establish a national human rights commission in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). The Government should establish within this body a specific division to monitor the human rights of African Americans.

89. In addition to the above, the Working Group urges the Government of the United States of America to consider the ratification of the core international human rights treaties to which the United States is still not a party, with a view to removing any gaps in the protection and full enjoyment of rights therein. It also encourages the United States to ratify regional human rights treaties and to review the reservations related to the treaties that it has signed or ratified.

90. Federal and state laws should be adopted that incorporate the International Covenant on Civil and Political Rights and other international human rights treaties, as well as regional treaties. To this end, an inter-agency body should be created, composed of high-level officials from the executive, the legislature and the judiciary at both the federal and the state levels, who will take steps to give effect to the decisions, resolutions, views, observations and recommendations of United Nations human rights bodies such as the Human Rights Council, the treaty bodies and special procedures, and of regional human rights bodies.

91. There is a profound need to acknowledge that the transatlantic trade in Africans, enslavement, colonization and colonialism were a crime against humanity and are among the major sources and manifestations of racism, racial discrimination, Afrophobia, xenophobia and related intolerance. Past injustices and crimes against African Americans need to be addressed with reparatory justice.

92. Monuments, memorials and markers should be erected to facilitate public dialogue. Education must be accompanied by acts of reconciliation, to overcome acts of racial bigotry and legacies of racial injustice. Federal and state legislation should be passed recognizing the negative impact of enslavement and racial injustice.

93. During the International Decade for People of African Descent, public forums or hearings should be held with African Americans in order to create a constructive and open dialogue in which organizations and social movements can share experiences and engage with policymakers and institutions of the local, state and federal government on ways to address the crisis being experienced by American society.

94. The Working Group encourages Congress to pass H.R. 40 — the Commission to Study Reparation Proposals for African-Americans Act — which would establish a commission to examine enslavement and racial discrimination in the colonies and the United States from 1619 to the present and to recommend appropriate remedies. The Working Group urges the United States to consider seriously applying analogous elements contained in the Caribbean Community's Ten-Point Action Plan on Reparations, which includes a formal apology, health initiatives, educational opportunities, an African knowledge programme, psychological rehabilitation, technology transfer and financial support, and debt cancellation.

95. The Working Group encourages the Government of the United States of America to elaborate a national action plan to fully implement the International Convention on the Elimination of All Forms of Racial Discrimination and comprehensively address racism affecting African Americans.

96. The Government should increase engagement with human rights organizations and civil society and should fund them with the aim of implementing the universal periodic review recommendations made to and accepted by the United States.

97. The Working Group urges the Government to ensure that recent policies undertaken to address racial disparities will be further implemented at the federal and state levels.

98. The Working Group urges Congress to expedite the passing of all pending criminal justice reform bills, including the End Racial Profiling Act and the Second Chance Reauthorization Act. It also welcomes the bipartisan support for bill S.2123 — the Sentencing Reform and Corrections Act of 2015 — which among other things proposes drastically reducing the use of mandatory minimum sentencing and in the Working Group's opinion is crucial to achieving comprehensive criminal justice reform.

99. The Working Group recommends urgent action to ensure accountability for police violence against African Americans: by improving the reporting of violations involving the excessive use of force and extrajudicial killings by the police, and ensuring that reported cases of excessive use of force are independently investigated; by ensuring that alleged perpetrators are prosecuted and, if convicted, are punished with appropriate sanctions; by ensuring that investigations are re-opened when new evidence becomes available; and by ensuring that victims or their families are provided with remedies. The Working Group also calls for implementation of the recommendations in the final report of the President's Task Force on 21st Century Policing.

100. The Working Group recommends that the Government step up its efforts to prevent excessive use of force by law enforcement officials by ensuring compliance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, of 1990.

101. Security policies in schools should be revisited. Policing in schools should be abolished.

102. Misdemeanour laws affecting schoolchildren should be repealed, such as the misdemeanour law in South Carolina under which school disturbance constitutes a misdemeanour.

103. The use of restraint and seclusion in schools should be prohibited. Early counselling should be given to students with mental health issues. Special attention and protection must be given to students with autism, attention deficit hyperactivity disorder and other similar disabilities.

104. The Working Group recommends that the Government develop guidelines on how to ensure that school discipline policies and practices are in compliance with international human rights standards. Positive Behavioural Interventions and Supports and restorative practices in school discipline should be used in order to reduce disciplinary incidents and improve learning in schools.

105. Males should be separated from females in detention. Younger prisoners should be separated from adults. Alternatives to imprisonment for youth, such as intervention and diversion, should be explored.

106. In imposing sentences, the welfare of the family of the accused should be taken into account, with particular attention given to the best interests of the child.

107. Appropriate measures should be adopted to prevent excessive bail. Alternatives to detention should also be explored.

108. Community policing strategies should be developed to give the community control of the police that are there to protect and serve them. The Working Group recommends that communities establish boards that would elect police officers they want playing this important role.

109. Before non-payment of a court fine or fee is treated as a civil contempt of court charge, it should first be determined whether the individual has the ability to pay. Imprisonment should not be offered as a way of paying off the debt. If the debt cannot be paid, the fee should not be levied.

110. The Working Group also recommends that the prison reform processes and policies include specific policies to address the increasing rate of incarceration of African American women.

111. Solitary confinement should be banned absolutely for being in violation of international human rights law standards, particularly those found in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and in the Standard Minimum Rules for the Treatment of Prisoners.

112. The Working Group recommends that the Government allow independent monitoring of places of detention in the United States, and in this connection that it consider inviting the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. As part of a call for greater expression of commitment to the rights of detainees, the Working Group takes the opportunity to urge the Government to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which creates a mechanism for unrestricted and unannounced visits to places of detention.

113. International human rights standards should be observed in the criminal justice system. The Working Group recommends the abolition of the death penalty throughout the United States.

114. **The Working Group calls upon the Government to ensure that all states repeal laws that restrict voting rights. In particular, it urges reinstatement of the voting rights of persons convicted of a felony who have completed their sentences.**

115. **Targeted measures should be developed to raise awareness of and reduce crimes against the lesbian, gay, bisexual, transgender, queer and intersex community, in particular against transgender women.**

116. **Asylum seekers should not be imprisoned pending a determination of their application for refugee status. The right to counsel and the right to an interpreter should be respected at all times.**

117. **The Working Group recommends extending access to affordable health care to a greater part of the population. Health policies and programmes should place particular priority on access to quality and affordable health care with targeted goals for reducing the maternal mortality of African American women.**

118. **Consistently, the school curriculum in each state should reflect appropriately the history of the transatlantic trade in Africans, enslavement and segregation.**

119. **The Department of Education should study zero tolerance policies and their disparate impact on African American students. A task force should be created to specifically focus on realigning and re-engaging students who have been dismissed from educational institutions as part of a zero tolerance policy.**

120. **The Working Group recommends upholding the right to adequate standards of living, including adequate food, housing, and safe drinking water and sanitation. The Government should immediately halt the demolition of public housing if replacement units have not been guaranteed. All such activities must be undertaken only through prior and informed consent and with the participation of the people affected.**

121. **The Working Group urges the Government to strengthen the implementation of Executive Order 12898, including through the allocation of adequate resources.**

122. **The Government of the United States of America should undertake a review of policies to improve protection of the environment and ensure that environmental justice is provided.**

123. **The Working Group encourages the Government to undertake impact-oriented activities in the framework of the International Decade for People of African Descent (2015-2024).**